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*Attorneys for Defendants*

UBER TECHNOLOGIES, INC.; RASIER, LLC; and  
RASIER-CA, LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.  
PASSENGER SEXUAL ASSAULT  
LITIGATION

3:23-MD-3084-CRB

**DECLARATION OF PHILIP FAVRO IN  
SUPPORT OF DEFENDANTS UBER  
TECHNOLOGIES, INC., RASIER, LLC, AND  
RASIER-CA, LLC'S OPPOSITION TO  
PLAINTIFFS' MOTION TO ENFORCE PTO  
NO. 2 AND TO COMPEL DEFENDANTS TO  
PRODUCE LITIGATION HOLD AND  
PRESERVATION INFORMATION**

This Document Relates to:  
  
ALL ACTIONS

Judge: Honorable Lisa J. Cisneros  
Date: January 4, 2024  
Time: 1:30 PM  
Courtroom: G – 15th Floor

1 I, Philip J. Favro, declare pursuant to 28 U.S.C. § 1746:

2 1. I am over the age of 18 and a resident of the State of Utah. I submit the instant  
3 declaration in support of Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC's  
4 (collectively "Uber") Opposition to Plaintiffs' Motion to Enforce PTO No. 2 and to Compel  
5 Defendants to Produce Litigation Hold and Preservation Information ("Motion").

6 **I. CREDENTIALS**

7 2. I am a Principal Consultant for Innovative Driven, an international electronic  
8 discovery consulting firm. I am also an attorney licensed to practice law in the States of California  
9 (1999) and Utah (2011). If called to do so, I could and would competently testify to the statements  
10 and opinions in this declaration. My Curriculum Vitae is attached hereto as Exhibit "A."

11 3. I am a nationally recognized expert in the field of electronic discovery. My  
12 expertise has qualified me to serve as a court-appointed special master on issues relating to  
13 electronic discovery and electronically stored information ("ESI"). In my role as a special master,  
14 courts have tasked me with (among other things) addressing issues regarding ESI preservation and  
15 spoliation, up to and including (but not limited to) the preparation of reports and recommendations  
16 on ESI spoliation.

17 4. As an expert on ESI and electronic discovery, I regularly provide training to judges  
18 on these subjects, including preservation and spoliation issues. Over the last three years, I have  
19 provided six training sessions to audiences of U.S. District Judges and/or U.S. Magistrate Judges  
20 on ESI preservation and spoliation issues and have emphasized the nature and scope of parties'  
21 common law duty to preserve relevant ESI.

22 5. Beyond these roles, I offer expert testimony and consulting services in the areas of  
23 data preservation practices, litigation holds, data collection strategies, search methodologies for  
24 ESI, security and privacy considerations regarding discovery of ESI, and protocols regarding the  
25 preservation, identification, and production of relevant ESI. I am one of the field's leading scholars  
26 on issues relating to the discovery process and the confluence of litigation and technology. Federal  
27 and state courts and academic journals have cited my articles.

7. I have been engaged by Uber to offer the instant declaration in connection with the Motion. In connection with preparing this Declaration, I have reviewed the following documents: The Motion, Plaintiffs' Notice of Motion, and related exhibits.

8. The purpose of my declaration is to provide the Court with contextual understanding regarding: (1) The nature of electronic discovery standards; (2) the best practices for preserving relevant ESI; and (3) why Plaintiffs’ request that Uber “suspend its company-wide document destruction policy,” ostensibly to preserve relevant information, is contrary to those standards and practices. To provide additional context on these issues, I also describe in this declaration the purposes underlying organizations’ implementation of corporate information retention policies.

9. It is my opinion—based on my collective experience dealing with ESI as a court-appointed special master, legal counsel, expert witness, and an ESI and electronic discovery consultant—that ordering the suspension of a company-wide document retention policy or policies would be contrary to electronic discovery standards and best practices for preserving relevant ESI; would result in significant over-retention of irrelevant ESI; could cause Uber to violate its obligations under various U.S. state privacy laws, as well as the data protection and privacy laws of other regions and nation-states; and would not necessarily succeed in facilitating the preservation of relevant ESI for the above-captioned litigation.

### III. ELECTRONIC DISCOVERY STANDARDS AND BEST PRACTICES FOR PRESERVING RELEVANT ESI

10. The principle that organizations like Uber need to preserve potentially relevant information, but not all information held by all employees, has been repeatedly endorsed by The Sedona Conference in its authoritative guidance on electronic discovery. Principle 5 from *The Sedona Principles* has adopted this concept in its entirety and counsels against requiring litigants to preserve all ESI. *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production* (“*The Sedona Principles*”), 19 SEDONA CONF. J. 1, 108-112 (2018); *see generally* The Sedona Conference, *Commentary on Ephemeral Messaging*, 22 SEDONA CONF. J. 435, 482-87 (2021); The Sedona Conference, *Commentary on Legal Holds, Second Edition: The Trigger & The Process*, 20 SEDONA CONF. J. 341 (2019); The Sedona Conference, *Commentary on Proportionality in Electronic Discovery*, 18 SEDONA CONF. J. 141, 150-53 (2017).

11. Upon the triggering of the duty to preserve, it is generally recognized by Rule 37(e), case law, and The Sedona Conference that a litigant must take reasonable steps to preserve relevant information. While the notion of “reasonable steps” is subject to interpretation in the context of specific litigation and highly dependent on the facts and circumstances of a particular matter, the 2015 committee note to Rule 37(e) urges courts to safeguard preserving parties against “aggressive preservation efforts.” Disproportionate preservation efforts, as the committee note counsels, “can be extremely costly,” which I have observed to be the case due to the proliferation and exponential growth of ESI. Proportionality considerations, which also factor into the preservation analysis per the 2015 committee note and subsequent case law, indicate that a preserving party “may act reasonably by choosing a less costly form of information preservation, if it is substantially as effective as more costly forms.” While there are many proportional methods that are less costly

1 than blanket measures such as suspending entire information retention policies, I have observed  
2 that one best practice that particularly stands out is the targeted method of disabling aspects of  
3 retention and destruction policies that only affect custodians on legal hold.

4 12. The Sedona Conference has also adopted these standards and advised against  
5 requiring companies from engaging in preservation efforts that are “heroic or unduly burdensome.”  
6 *The Sedona Principles*, 19 SEDONA CONF. J. at 108-12. This is particularly the case for enterprises  
7 like Uber, which I understand maintains “an inventory of existing legal holds and know[s] whether  
8 information relevant to the claims and defenses in [the instant litigation are] already being  
9 preserved” in connection with its existing litigation portfolio. *Id.* at 99, 108. Because Uber is  
10 knowledgeable about the universe of relevant information already on legal hold due to other legal  
11 matters, The Sedona Conference charges companies like Uber under Sedona Principle 6 with the  
12 sole responsibility to determine what procedures and methodologies are best suited to preserve  
13 relevant ESI. *Id.* at 118-26.

14 13. Despite these clear standards regarding the requirement to preserve only relevant  
15 information and adopt reasonable steps to do so, I understand that Plaintiffs seek to acquire an  
16 order requiring Uber to suspend its enterprise email retention policy that affects *every* employee  
17 at the company throughout its global operations. My opinion is that such a request, without regard  
18 to custodians of relevant ESI or their involvement in the claims at issue in the instant litigation, is  
19 extraordinary and would encompass enormous volumes of irrelevant ESI. Given my familiarity  
20 with enterprises and the categories of information they typically generate, vast amounts of  
21 nonresponsive communications on issues ranging from irrelevant strategic business plans to casual  
22 lunch plans (and everything in between) would now fall within the scope of that order. This  
23 includes large troves of personal data and personally identifiable information (“PII”) belonging to  
24 either or both employees and consumers. Retaining personal data or PII beyond Uber’s designated  
25 retention periods could run afoul of the European Union General Data Protection Regulation  
26 (“GDPR”) and the California Consumer Privacy Act, along with other international and domestic  
27 data protection and privacy statutes. This could potentially expose Uber to severe fines and other

1 penalties, which are completely unnecessary when, as I understand it, Uber has already adopted  
2 more proportional preservation methods to efficiently retain potentially relevant materials for this  
3 litigation.

4 14. Were Plaintiffs' requested approach adopted, my opinion is that Uber could incur  
5 a disproportionate cost to preserve all emails generated and received regarding Uber's global  
6 business operations. The costs could include preserving millions upon millions of irrelevant emails  
7 on servers that would otherwise be eliminated. In my view, it would be unprecedented for the  
8 Court to issue an order of this magnitude, particularly given Uber's stated intention to comply with  
9 its preservation obligations and the proactive steps it has taken so far in this litigation.

10 15. Based on my knowledge gained from both representing and consulting with  
11 organizations, together with my experience as a special master, I concur with the steps Uber has  
12 taken in this lawsuit to disable aspects of its email and other retention policies that apply to the  
13 custodians who are in fact on legal hold. I view this as an appropriate practice under the  
14 circumstances of this case given my observation that companies who follow this approach can  
15 typically preserve relevant emails from the employee custodians at issue, taking into account the  
16 custodians who are already on legal hold in other matters. My opinion is that this measure,  
17 particularly for purposes of preserving email, is an effective, targeted, and proportional approach  
18 to ensure relevant communications are preserved for collection, search, review, and production.

19 **IV. NATURE AND PURPOSES OF INFORMATION RETENTION POLICIES**

20 16. Plaintiffs have expressed concern that Uber's email retention policy might operate  
21 to deprive them of relevant information for this lawsuit. While the Motion does not appear to cite  
22 any evidence substantiating such a proposition, I have observed that the purposes generally  
23 underlying organizations' implementation of corporate information retention policies do not  
24 support this assertion.

25 17. I have observed in my various roles that there are several legitimate purposes  
26 underlying the establishment of information retention policies. Memorialized over the years in  
27 court orders and materials generated by The Sedona Conference and other organizations, those

1 purposes are typically “motivated by general business needs” and include “the innocent purpose  
2 of simply limiting the volume of a party’s files and retaining only that which is of continuing  
3 value.” The U.S. Court of Appeals for the Federal Circuit referred to this as the “good  
4 housekeeping” purpose. *Micron Tech., Inc. v. Rambus Inc.*, 645 F.3d 1311, 1322 (Fed. Cir. 2011).  
5 I have found that this has been the traditional reason on which organizations like Uber have relied  
6 to develop records retention policies. *See generally* The Sedona Conference, *Commentary on*  
7 *Defensible Disposition*, 20 SEDONA CONF. J. 179 (2019); *The Sedona Principles*, 19 SEDONA  
8 CONF. J. at 59-64.

9 18. Over the past several years, however, I observed that organizations augmented the  
10 purposes for which they developed information retention policies to include cyber security and  
11 information security. This is due to the increasing number of cyber incidents from third parties and  
12 internal threats from malicious insiders. After many notorious cyber attacks during the past decade  
13 that have resulted in an untold number of emails and other proprietary information being circulated  
14 around the internet, I observed that organizations began taking more aggressive measures to reduce  
15 their stockpiles of old emails known commonly as “ROT” (redundant, outdated, and trivial) data.  
16 It is now an established best practice to implement information retention policies that eliminate  
17 ROT data, particularly emails, so as to ameliorate harm that might transpire in the event of a data  
18 breach. *See* The Sedona Conference, *Commentary on Defensible Disposition*, 20 SEDONA CONF.  
19 J. 179, 213 (2019) (“Regulatory agencies are now recommending that organizations, as part of  
20 their cybersecurity program, have policies for the secure disposal of information that is not  
21 required to be retained by law or regulation. The FTC also recommends that organizations consider  
22 data minimization (i.e., limiting the collection of consumer data, and retaining that information  
23 only for a set period of time, and not indefinitely) to reduce the attractiveness of those repositories  
24 to data thieves, the harm done to consumers when breach occurs, and the risk of use of the data in  
25 ways not consistent with its intended use.”).

26 19. During this same timeframe, I have seen organizations take efforts to establish  
27 defensible disposition programs in order to comply with data protection and privacy laws. For  
28



1 companies with global operations, the most prominent of these laws has been the GDPR, which  
2 has express directives requiring companies to minimize the types of personal data that can typically  
3 be found in emails. Other countries and U.S. states have followed the EU's lead, implementing  
4 laws to address data protection and privacy including (among others) Brazil, China, California,  
5 Virginia, and Colorado. To comply with these laws, I have found that organizations need to adopt  
6 policies and practices to reduce over-retention of personal data and PII while simultaneously  
7 meeting their common law obligations to preserve evidence with respect to reasonably anticipated  
8 litigation. *See generally* The Sedona Conference, *Commentary on Ephemeral Messaging*, 22  
9 SEDONA CONF. J. 435 (2021).

10 I declare under penalty of perjury that the foregoing is true and correct.

11  
12 Executed on December 22, 2023

13   
Philip Favro



# EXHIBIT A



# PHILIP J. FAVRO

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## PROFILE

Philip Favro is a leading expert on issues relating to electronically stored information. Phil serves as a court-appointed special master, expert witness, and trusted advisor to law firms and organizations on matters involving ESI and electronic discovery. He is a nationally recognized scholar on electronic discovery, with courts and academic journals citing his articles. Phil also regularly provides training to judges on electronic discovery and ESI. He is a licensed attorney who in private practice represented organizations and individuals in litigation across the spectrum of business disputes. In addition to handling a range of complex and other discovery issues, Phil has extensive experience in the courtroom including summary judgment, preliminary injunction, and discovery motion practice, together with trial and arbitration experience.

## PROFESSIONAL EXPERIENCE

### INNOVATIVE DRIVEN

12/15–Present

PRINCIPAL CONSULTANT, DISCOVERY AND INFORMATION GOVERNANCE

**Court-Appointed Special Master.** Serve as a court-appointed special master in matters involving ESI and electronic discovery. Address issues across the range of discovery disputes including ESI preservation, collection, search, review, production, and spoliation. Broker agreements with the parties on disputed issues, hold hearings and conferences, examine and weigh evidence, assess witness credibility, and author orders, reports, and recommendations relating to the disposition of legal and factual issues and privilege claims.

**Expert Witness and Rule 30(b)(6) Witness.** Offer expert testimony on issues relating to electronic discovery including appropriate steps and methods for handling the preservation of relevant information, the duty to conduct a reasonable inquiry, the proper use and development of search methodologies and analytics tools including technology-assisted review (TAR), the use of ESI protocols, the role of sampling to satisfy production obligations, the importance of metadata, and safeguarding privileged information and work product. Also provide Rule 30(b)(6) testimony on behalf of organizations regarding discovery and information topics.

**Consultant to Law Firms and Organizations.** Act as a trusted advisor to organizations and law firms on issues regarding discovery and information governance. Provide guidance on data preservation practices, litigation holds, data collection strategies, and search methodologies for electronically stored information. Offer direction on records retention policies, litigation hold policies, and the need to manage dynamic sources of information found on social media, messaging applications, and smartphones.

**eDiscovery Legal Scholar.** Am one of the leading scholars on issues relating to ESI and electronic discovery. Federal and state courts and academic journals (University of Pennsylvania Law Review, Notre Dame Law Review, and Cornell Law Review) have cited my articles.

**Ephemeral Messaging Expertise.** Am one of the foremost experts on ephemeral messaging and consult with clients regarding its impact on discovery obligations and corporate information governance programs. This includes helping address preservation duties in civil discovery, complying with regulators who discourage ephemeral messaging use, preparing policies regarding the implementation of ephemeral messaging, and guiding the selection of technologies. Am one of the leading thought leaders on these issues and served as the Editor-in-Chief for The Sedona Conference *Commentary on Ephemeral Messaging*, 22 SEDONA CONF. J. 435 (2021).

**PHILIP J. FAVRO**, CURRICULUM VITAE

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**RECOMMIND, INC.**

01/14 to 09/15

SENIOR DISCOVERY COUNSEL

**Consultant & Legal Scholar.** Served as consultant for lawyers, organizations, and judges regarding key developments, trends, and best practices in litigation, electronic discovery, information governance, and data protection. Authored scholarly articles and industry pieces relating to electronic discovery and information governance.

**SYMANTEC CORPORATION**

02/11 to 08/13

SENIOR DISCOVERY COUNSEL

**Consultant & Legal Scholar.** Provided guidance to organizations' in-house counsel regarding best practices for electronic discovery, data protection, and information governance. Shared strategies for reducing inefficiencies and costs, maximizing information, and satisfying legal strictures. Developed articles and analyses regarding int'l data protection laws. Authored scholarly articles and other writings on electronic discovery and information governance.

**SANTA CLARA COUNTY SUPERIOR COURT**

02/10 to 08/12

JUDGE PRO TEM, TRAFFIC DIVISION

**Arraignments.** Presided as pro tem judicial officer at arraignment proceedings for traffic-related infractions and misdemeanors. Entered pleas, set matters for trial, and assigned fines or other penalties.

**Trials.** Conducted trials as pro tem judicial officer for traffic-related infractions and misdemeanors. Received and weighed oral/written evidence from police officers and defendants, entered findings, imposed fines or other penalties, and/or dismissed matters.

**Appeals.** Prepared written record of proceedings of traffic trials subject to appeal.

**PACKARD, PACKARD & JOHNSON**

02/06 to 08/10

SENIOR COUNSEL (LITIGATION)

**High Stakes Litigation.** False Claims Act litigation practice focused on pursuing high stakes procurement fraud cases with the U.S. Department of Justice. Represented clients in matters that culminated in settlements between the Department of Justice and various defendants in a total amount exceeding \$300 million.

**Discovery Practice.** Successfully litigated discovery motions that enabled clients to obtain key documents supporting their claims and allegations of procurement fraud. Prepared initial disclosures, handled FRCP 26(f) obligations, reviewed ESI, conducted meet and confers, prepared discovery motions, and conducted follow-up consistent with discovery orders.

**Firm eDiscovery Practice Leader.** Directed the firm's electronic discovery practice. Trained government attorneys, federal investigators, firm lawyers, and document reviewers regarding the discovery of ESI. Supervised production, receipt, and analysis of millions of pages of ESI.

**HOPKINS & CARLEY, A LAW CORPORATION**

09/99 to 02/06

ASSOCIATE (LITIGATION)

**Business Litigation.** Business litigation practice concentrated on advising organizations regarding commercial contract, trademark, trade secret, partnership, and employment disputes. Obtained summary judgment and writs of attachment orders; handled pleadings, discovery, pre-trial motion practice, and expert discovery. Participated

as counsel in trial regarding IP dispute in U.S. District Court, Northern District of California.

**Discovery Practice.** Managed discovery efforts as lead associate on a professional malpractice dispute involving \$300 million in alleged damages against an international accounting firm. Engaged in motion practice, supervised production of millions of pages of electronic and paper records, and advised client regarding other complex discovery issues. Handled motion practice, depositions, written discovery, and related tasks in various other cases.

**HON. JEREMY FOGEL, U.S. DISTRICT JUDGE (N.D. CAL.)**  
JUDICIAL EXTERN

08/98 to 01/99

**Legal Research and Writing.** Performed legal research and analysis, prepared memoranda, and drafted proposed orders under the direction of the Judge Fogel and his law clerks.

## Education

**Santa Clara University School of Law**, Santa Clara, CA

DEGREE: Juris Doctor | 1999

- Emery Academic Merit Scholar | 1997-99
- Member, Honors Moot Court Board | 1998-99
- Dean's List | 1997

**Brigham Young University**, Provo, UT

DEGREE: Bachelor of Arts, Political Science | 1994

- Spanish Minor
- Dean's List

## Licenses

**Utah State Bar, Lawyer**

- 2011—Present

**California State Bar, Lawyer**

- 1999—Present

## Professional Associations & Rankings

**Georgetown Law Advanced eDiscovery Institute**—(2023—Present)

- Advisory Board Member

**Seventh Circuit Bar Association**—(2023—Present)

- Honorary Member
- Associate Editor, *The Circuit Rider*

**Chambers and Partners**—(2019—Present)

- Chambers-Ranked Lawyer, Band 1 USA-Nationwide Litigation Support/eDiscovery (2023—Present)
- Chambers-Ranked Lawyer, Band 2 USA-Nationwide Litigation Support/eDiscovery (2019—2022)

**The Sedona Conference—(2011–Present)**

- Member, WG1 Steering Committee (Electronic Document Retention & Production) (2019-2021)
- Project Manager, WG1 Steering Committee (2017-2019)
- Editor-in-Chief, *Commentary on Ephemeral Messaging* (2021)
- Editor-in-Chief, *Commentary on the Effective Use of Federal Rule of Evidence 502(d) Orders* (2021)
- Editor-in-Chief, *Commentary on ESI Evidence & Admissibility, Second Ed.* (2020)
- Editor-in-Chief, *Primer on Social Media, Second Ed.* (2019)
- Drafting Team Leader, *Commentary on Proportionality in Electronic Discovery, 3rd Ed.* (2017)

**Utah State Bar Litigation Section—(2018–2023)****Central Utah Bar Association—(2014–2023)****Coalition of Technology Resources for Lawyers—(2014–2019)**

- Director of Legal Education and Resources
- Editor-in-chief, *Guidelines Regarding the Use of Technology-Assisted Review*
- Lead author, *The New Information Governance Playbook for Addressing Digital Age Threats*

**Santa Clara County Bar Association—(2000–2013)**

- Member, Board of Trustees (2009–2010)
- Chair, Exec. Committee, High Technology Law Section (2007–2010)

**American Bar Association—(2009–2014)**

- Science & Technology Section (2009–2014)
- Litigation Section (2013–2014)
- Judicial Division (Lawyers Conference) (2013–2014)

**California State Bar—(2008–2010)**

- Exec. Committee, Law Practice Management & Technology Section

**Special Master Appointments**

(Orders, Reports, and Recommendations available on Westlaw)

1. **Deal Genius, LLC v. O2COOL, LLC**, No. 21-cv-2046 (N.D. Ill.); Magistrate Judge Jeffrey Cole; Appointed Special Master on September 23, 2022. *See* 2022 WL 17418892 and 2022 WL 17419522.

**Special Master Report No. 1**, *Report Re Status Of Dispute Regarding Production Of Certain Emails*, 2022 WL 17418933 (N.D. Ill. Oct. 24, 2022).

**Special Master Report No. 6**, *Report Re Status of Disputes Over the Production of Emails and the Failure to Preserve Emails*, 2023 WL 2299977 (N.D. Ill. Feb. 17, 2023); *report and recommendations adopted*, 2023 WL 2299976 (N.D. Ill. Feb. 23, 2023).

**Special Master Report No. 9**, *Report Re Status of Disputes Over the Production of Emails and the Failure to Preserve Emails*, 2023 WL 3445758 (N.D. Ill. Apr. 28, 2023).

**Special Master Report No. 11**, *Report Re Status of Disputes Over the Production of Emails and the Failure to Preserve Emails*, 2023 WL 3445759 (N.D. Ill. May 8, 2023).

**Order Addressing the Parties' Dispute Re Elusion Testing and Additional Search Terms**, --- F. Supp. 3d ---, 2023 WL 4556759 (N.D. Ill. 2023).

2. **Porter v. Equinox Holdings, Inc.**, No. RG19009052 (Cal. Super. Ct., Alameda Cty.); Superior Court Judge Paul Herbert; Appointed Expert Advisor on December 16, 2021.

**Order** *Re Production of Linked Documents in Family Relationships and Privacy Issues Re Production of Relevant Documents*, 2022 WL 887242 (Cal. Super. Mar. 17, 2022).

3. **Shumway v. Wright**, No. 4:19-cv-00058 (D. Utah); District Judge David Nuffer; Appointed Special Master on September 4, 2019. *See* 2019 WL 8135705.

**Special Master Report No. 21**, *Report and Recommendation on Plaintiffs' Motion for Order of Contempt against Defendant Gary D. Slavens and Award of Attorney Fees and Costs*, 2020 WL 3038052 (D. Utah May 19, 2020); *report and recommendation adopted*, 2020 WL 3037207 (D. Utah June 5, 2020).

**Special Master Report No. 17**, *Report and Recommendation re Erasure of Google Drive Documents Reflecting Trade Secrets Seized from Defendant Gary D. Slavens*, 2020 WL 1042168 (D. Utah Jan. 28, 2020); *report and recommendation adopted*, 2020 WL 1038014 (D. Utah Feb. 10, 2020).

**Special Master Report No. 16**, *Report and Recommendation re Erasure of Additional Trade Secret Documents Seized from Defendant Gary D. Slavens*, 2020 WL 1037773 (D. Utah Jan. 13, 2020); *report and recommendation adopted*, 2020 WL 1038152 (D. Utah Jan. 29, 2020).

**Special Master Report No. 14**, *Report and Recommendation re Erasure of Trade Secret Documents Seized from Defendant Gary D. Slavens*, 2019 WL 8129801 (D. Utah Dec. 17, 2019); *report and recommendation adopted*, 2020 WL 1042036 (D. Utah Jan. 29, 2020).

**Special Master Report No. 12**, *Report and Recommendation on Additional Null Set Searches re Documents Seized from Defendant Gary D. Slavens*, 2019 WL 8137128 (D. Utah Nov. 25, 2019), *report and recommendation adopted*, 2020 WL 1042211 (D. Utah Jan. 8, 2020).

**Special Master Report No. 11**, *Report and Recommendation on the Review of Certain Null Set Documents Seized from Defendants James Linn Wright, Audra Wright, and Gary D. Slavens*, 2019 WL 8135308 (D. Utah Nov. 22, 2019), *report and recommendation adopted*, No. 4:19-CV-00058-DN-PK, 2019 WL 8137130 (D. Utah Dec. 16, 2019).

**Special Master Report No. 10**, *Report and Recommendation on the Disposition of Certain ESI Seized from Defendant Gary D. Slavens*, 2019 WL 8129803 (D. Utah Nov. 19, 2019), *report and recommendation adopted*, 2019 WL 8137130 (D. Utah Dec. 16, 2019).

**Special Master Report No. 8**, *Report and Recommendation on the Disposition of Information Seized from Defendant Gary D. Slavens*, 2019 WL 8129820 (D. Utah Nov. 4, 2019); *report and recommendation adopted*, 2019 WL 8137130 (Dec. 16, 2019).

**Special Master Report No. 7**, *Preliminary Conclusions regarding the Records Seized from Defendant Gary Slavens*, 2019 WL 8135701 (D. Utah Oct. 9, 2019).

**Special Master Report No. 5**, *Report on the Erasure of Information Seized from Defendant James Linn Wright and Defendant Audra Wright*, 2019 WL 8135310 (D. Utah Oct. 1, 2019).

**Special Master Report No. 3**, *Report and Recommendation on the Disposition of Information Seized from Defendant James Linn Wright and Defendant Audra Wright*, 2019 WL 8129822 (D. Utah Sept. 27, 2019).  
**Order**, *Granting in Part and Denying in Part the Wrights' Motion for Expedited Return of Seized Devices*



*or, in the Alternative, Supervised Access to Macbook Pro*, 2019 WL 8129821 (D. Utah Sept. 18, 2019).

**Special Master Report No. 1**, *Status of Searches through Data from Defendants' Seized Computer Devices*, 2019 WL 8137124 (D. Utah Sept. 17, 2019).

## Expert Witness and Rule 30(b)(6) Testimony

(2019—Present)

1. **Core Consultants, Inc. v. Ferran**, No. 2021CV31719 (Colo. District Court, Arapahoe Cty., Nov. 7, 2022). Oral testimony during hearing before court-appointed special master supporting inclusion of certain provisions in an ESI protocol regarding search terms and production format.
2. **Fernandez v. Walmart Inc.**, No. RIC1904598 (Cal. Super. Ct, Riverside Cty., Oct. 17, 2022). Written declaration in support of opposition to motion for terminating, issue, evidentiary, and monetary sanctions and/or to compel compliance with the court's prior discovery order.
3. **Schmidt v. Allstate Prop. and Cas. Ins. Co.**, No.: 41D03-1408-CT-00125 (Indiana, Johnson County Super. Ct., Aug. 12, 2022). Written affidavit in support of motion to modify an order compelling defendant to engage in a nationwide production of insurance claims files.
4. **Dominion Voting Systems, Inc. v. Fox News Network, LLC**, No. N21C-03-257 EMD (Delaware Super. Ct., Aug. 5, 2022). Oral testimony in the capacity of a Rule 30(b)(6) witness regarding the nature and extent of plaintiff's efforts to respond to defendant's written discovery requests.
5. **Hogan v. Wal-Mart Stores E., LP**, No. 4:21-cv-78 RLW (E.D. Mo. Mar. 11, 2022), ECF No. 48-2. Written declaration in support of motion for relief from discovery order compelling defendant to produce responsive communications to plaintiff's written discovery request.
6. **Hernandez v. Solorzano**, No. 21STFL06318 (Cal. Super. Ct., Los Angeles Cty., Aug. 17, 2021). Written declaration addressing standard employer practices regarding termination of access to corporate network and devices for departed employees.
7. **Moore v. Westgate Resorts, Ltd.**, No. 3:18-cv-00410 (M.D. Tenn. Nov. 1, 2019), ECF No. 78. Written declaration in support of motion for entry of an ESI protocol to govern discovery issues in the litigation.
8. **Southam & Associates, Inc. v. McClellan**, No. 1604011926 (Utah Fourth Dist. Ct., Mar. 8, 2019). Written declaration in support of motion for sanctions and other discovery relief regarding a litigant's apparent refusal to meet and confer regarding the development of search terms.

## ESI and eDiscovery Trainings for the Judiciary

(2013—Present)

1. **2023 National Workshop for Magistrate Judges II—7/11/2023 (Atlanta, GA)**, *"Delete" Uncertainty: Learn the Basics and Beyond on ESI Spoliation*. Training regarding ESI spoliation sanctions under Federal Rule of Civil Procedure 37(e) to a national audience of U.S. Magistrate Judges through the Federal Judicial Center.
2. **2023 National Workshop for Magistrate Judges II—7/10/2023 (Atlanta, GA)**, *A Discussion with Magistrate Judges about AI's Impact on Legal Issues They Manage*. Training regarding the potential impact of artificial intelligence on civil and criminal issues to a national audience of U.S. Magistrate Judges through the Federal Judicial Center.

3. **2023 National Workshop for Magistrate Judges I—4/18/2023 (San Diego, CA)**, *“Delete” Uncertainty: Learn the Basics and Beyond on ESI Spoliation*. Training regarding ESI spoliation sanctions under Federal Rule of Civil Procedure 37(e) to a national audience of U.S. Magistrate Judges through the Federal Judicial Center.
4. **2023 National Workshop for Magistrate Judges I—4/17/2023 (San Diego, CA)**, *AI is Coming to Your Courthouse: Are You Ready?* Training regarding the potential impact of artificial intelligence on civil and criminal issues to a national audience of U.S. Magistrate Judges through the Federal Judicial Center.
5. **U.S. District Court, Eastern District of Michigan—5/31/2022 (Virtual)**, *Ephemeral Messaging: Understanding the Benefits and Addressing the Risks*. Training regarding the nature of ephemeral messaging and the challenges that it presents for courts in civil litigation.
6. **U.S. District Court, District of Utah—5/4/2022 (Salt Lake City, UT)**, *Ephemeral Messaging: Understanding the Benefits and Addressing the Risks*. Training regarding the nature of ephemeral messaging and the challenges that it presents for courts in civil litigation.
7. **U.S. District Court, Northern District of Illinois—2/9/2022 (Virtual)**, *Ephemeral Messaging: Understanding the Benefits and Addressing the Risks*. Training regarding the nature of ephemeral messaging and the challenges that it presents for courts in civil litigation.
8. **Ohio Courts of Appeals Judges Association Fall Conference—9/1/2021 (Virtual)**, *Discovery of Electronic Materials: New Ohio Civ. R.37(E): Failure to Preserve Electronic Stored Information (ESI)*. Delivered training to Ohio State Supreme Court Justices and Appellate Court Judges regarding key appellate issues relating to sanctions arising from the destruction of ESI under new Ohio Rule of Civil Procedure 37(e).
9. **Federal Judicial Center—5/3/2021 (Virtual)**, *Electronically Stored Information and Discovery Misconduct in an Electronic Age*. Provided training to national audience of U.S. District Judges and U.S. Magistrate Judges through the Federal Judicial Center regarding ESI preservation and production issues.
10. **U.S. District Court, District of Utah—10/20/2020 (Virtual)**, *Seizure Orders under the Defend Trade Secrets Act of 2016*. Training regarding key legal and technological considerations regarding the issuance of seizure orders under the Defend Trade Secrets Act of 2016.
11. **2018 Utah District Court Judges Conference—5/17/2018 (St. George, UT)**, *Dealing with Discovery: Technology and ESI Tips for the Digital Age Jurist*. Provided judicial training for Utah state court judges at their annual retreat regarding common ESI preservation and search challenges, together with various recommendations and best practices for addressing those challenges.
12. **U.S. District Court, District of Utah—10/1/2014 (Salt Lake City, UT)**, *Guidelines Regarding the Use of Technology-Assisted Review (TAR)*. Training regarding the basics of TAR, along with several strategic and tactical issues that courts and counsel should consider in connection with the use of TAR.
13. **U.S. District Court, District of Utah—9/12/2013 (Salt Lake City, UT)**, *Getting The Basics: Highlights of the Newly Proposed Amendments to the Federal Rules of Civil Procedure*. Training on the proposed amendments to the Federal Rules of Civil Procedure regarding proportionality and sanctions for failures to preserve relevant ESI.

## Court Citations to Authored Articles

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2. **Deal Genius, LLC v. O2COOL, LLC**, No. 21-cv-2046, 2023 WL 2299977, at \*3 (N.D. Ill. Feb. 17, 2023).
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4. **DR Distributors, LLC v. 21 Century Smoking, Inc.**, 616 F. Supp. 3d 769, 787 (N.D. Ill. 2022).
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6. **Shumway v. Wright**, No. 4:19-cv-00058-DN-PK, 2019 WL 8137128, \*2, n.6 (D. Utah Nov. 25, 2019), *report and recommendation adopted*, 2020 WL 1042211 (D. Utah Jan. 8, 2020).
7. **Shumway v. Wright**, No. 4:19-CV-00058-DN-PK, 2019 WL 8135308, at \*3, n.16 (D. Utah Nov. 22, 2019), *report and recommendation adopted*, 2019 WL 8137130 (D. Utah Dec. 16, 2019).
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9. **Shumway v. Wright**, No. 4:19-CV-00058-DN-PK, 2019 WL 8129822, at \*5, n.16 (D. Utah Sept. 27, 2019).
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11. **Rio Tinto PLC v. Vale S.A.**, 306 F.R.D. 125, 128 (S.D.N.Y. 2015).
12. **United States ex rel. Carter v. Bridgepoint Educ., Inc.**, 305 F.R.D. 225, 237, n.23 (S.D. Cal. 2015).
13. **Quintana v. Claire's Boutiques, Inc.**, No. 13-cv-0368, 2014 WL 234219, at \*2, n.13 (N.D. Cal. Jan. 21, 2014).
14. **Lake v. City of Phoenix**, 220 Ariz. 472, 486 (Ct. App.) (Norris, J. *dissent*), *vacated in part*, 222 Ariz. 547 (2009).

## Scholarly Articles, Books, Commentaries, and Bar Journal Articles

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1. **Ephemeral Messaging: Understanding Key Preservation Issues in Civil Litigation**, THE CIRCUIT RIDER: THE JOURNAL OF THE SEVENTH CIRCUIT BAR ASSOCIATION (May 2023) | Author.
2. **The Outsized Impact of Text Messages on Litigation**, FMJA BULLETIN (March 2023) | Author.
3. **Ephemeral Messaging: Understanding Key Preservation Issues in Civil Litigation**, FMJA BULLETIN (Sep. 2022) | Author
4. **Selected eDiscovery and ESI Case Law from 2021-22**, THE CIRCUIT RIDER: THE JOURNAL OF THE SEVENTH CIRCUIT BAR ASSOCIATION (June 2022) | Author.
5. **Navigating Social Media Discovery: What Judges Need to Know About How Lawyers Should Deal with Mass Deletion of Social Media History**, FMJA BULLETIN (June 2022) | Co-Authored with the Hon. Helen Adams, U.S. Magistrate Judge (Southern District of Iowa) and Leslie Behaunek (Nyemaster Goode).

6. **Navigating Social Media Discovery: Steps Counsel Can Take to Address Mass Deletion of Social Media History**, THE IOWA LAWYER (June 1, 2022) | Co-Authored with the Hon. Helen Adams, U.S. Magistrate Judge (Southern District of Iowa) and Leslie Behaunek (Nyemaster Goode).
7. **Solving the Privilege Conundrum in Discovery**, PRACTICAL LAW (Mar. 4, 2022) (with updates on legal and practical issues affecting privilege log practices since originally published in 2016) | Author.
8. **DTSA Seizure Orders**, PRACTICAL LAW THE JOURNAL (Winter 2022) | Author.
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15. **Commentary on ESI Evidence & Admissibility, Second Ed.**, 22 SEDONA CONF. J. 83 (2021) | Editor-in-Chief and Contributing Author (The Sedona Conference).
16. **Slack Discovery: Key Issues and Challenges**, PRACTICAL LAW (Apr. 1, 2020) | Author.
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21. **Commentary on Proportionality in Electronic Discovery, Third Ed.**, 18 SEDONA CONF. J. 141 (2017) | Drafting Team Leader and Contributing Author (The Sedona Conference).
22. **The New Information Governance Playbook for Addressing Digital Age Threats**, 3 RICH. J.L. & TECH. ANN. SURVEY (2017) | Co-Author.
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